Michael a/l Vincent v Mohanraj a/l Sandran & Anor

HIGH COURT (SHAH ALAM) — CIVIL APPEAL NO 12B-141–04 OF 2014
GUNALAN MUNIANDY JC
10 JUNE 2015

Damages — Quantum — Appeal against quantum — General damages — Moderate traumatic brain injury — Whether award unreasonable — Loss of consciousness — Whether award wrong in principle and should be set aside — Partial loss of hearing — Whether severity of loss considered — Whether award reasonable — Special damages — Whether award supported by evidence — Whether award should be reduced

Michael a/l Vincent ('the respondent') had sustained several injuries in a road accident. Details of these injuries, particularly head injuries that resulted in some residual disabilities were disclosed in the specialist reports tendered by the respondent. The sessions court judge awarded the respondent general damages and two items of special damages. This was an appeal against the damages awarded to the respondent.

Held, varying the awards with each party to bear their own costs:

(1) It is trite law that an appellate court would not interfere with the award of damages by a trial court unless the assessment, inter alia, was considered inordinately low or manifestly excessive or if the court had acted on wrong principles. Upon a careful consideration of the medical reports in the present case, as well as the assessment by the trial judge it was clear that certain items of general damages, namely in respect of the moderate traumatic brain injury, loss of consciousness and partial loss of hearing were manifestly excessive or erroneous considering comparable awards (see paras 1–2).

(2) In view of the moderate traumatic brain injury and the opinion of the respondent's specialist that the residuals would be resolved within two years, the high award of RM100,000 was unjustified and unreasonable. A more reasonable award would be RM80,000. There should not have been a separate award for loss of consciousness as it was included in the compensation for pain and suffering under the head injuries and thus been accounted for. Therefore, this award was wrong in principle and should be set aside. Since the hearing loss was only to the extent of 5% there was no justification or basis for the high award of RM40,000 for partial loss of hearing. A more reasonable award and consistent with the usual trend for this item was RM25,000. As such, the award for general

damages was reduced by RM40,000 to RM177,000 based on these adjustments to the assessment (see paras 2 & 4).

(3) As for the special damages, the appellants' objections to the award for analgesic medication for headache of RM100 per month had no merit. The award was not wrong in principle and was thus maintained. However, the medication for mood affective disorder for the respondent's remaining life span was a claim that was speculative in nature and thus unreasonable and excessive. The respondent's neurologist report had not expressed any opinion as to whether this medication would be required by the respondent and for how long. Nevertheless, as there was no dispute that the plaintiff suffered this condition a reasonable award should be made for the future and not the whole sum claimed. Consequently, this item should be reduced to RM40,000 (see paras 5–6).

[Bahasa Malaysia summary

Michael a/l Vincent ('responden') telah mengalami beberapa kecederaan dalam kemalangan jalanraya. Butir kecederaan tersebut, terutamanya kecederaan kepala mengakibatkan sedikit kecacatan didedahkan dalam laporan pakar yang diserahkan oleh responden. Hakim mahkamah sesyen mengawardkan kepada responden ganti rugi am dan dua perkara ganti rugi khas. Ini adalah rayuan terhadap ganti rugi yang diawardkan kepada responden.

Diputuskan, mempelbagaikan award dengan setiap pihak menanggung kos mereka sendiri:

(1) Adalah undang-undang nyata bahawa mahkamah rayuan tidak akan campur tangan dengan award ganti rugi oleh mahkamah perbicaraan kecuali penilaian, antara lain, dipertimbangkan terlalu rendah atau berlebihan atau jika mahkamah telah bertindak atas prinsip yang salah. Atas pertimbangan terperinci terhadap laporan perubatan dalam kes ini, dan juga penilaian oleh hakim perbicaraan adalah jelas bahawa perkara tertentu ganti rugi am, iaitu berkaitan kecederaan trauma otak yang sederhana, tidak sedar diri dan kehilangan sebahagian daripada pendengaran adalah berlebihan atau silap dengan mempertimbangkan award yang setanding (lihat perenggan 1–2).

(2) Mengambil kira kecederaan trauma otak yang sederhana dan pendapat pakar responden bahawa sisa-bakinya akan dipulihkan dalam masa dua tahun, award tinggi sebanyak RM100,000 adalah tidak berjustifikasi dan tidak munasabah. Award yang lebih munasabah adalah RM80,000. Tidak patut terdapat award berbeza bagi tidak sedar diri kerana ia dimasukkan dalam pampasan untuk kesakitan dan penderitaan di bawah kecederaan kepala dan oleh itu telah dikira. Oleh itu, award ini adalah salah dalam prinsip dan patut diketepikan. Memandangkan kehilangan pendengaran hanya setakat 5% tidak ada justifikasi atau asas untuk award

tinggi sebanyak RM40,000 bagi sebahagian kehilangan pendengaran. Award yang lebih munasabah dan konsisten dengan trend biasa bagi perkara ini adalah RM25,000. Oleh itu, award untuk ganti rugi am dikurangkan sebanyak RM40,000 kepada RM177,000 berdasarkan atas pembetulan kepada penilaian (lihat perenggan 2 & 4).

(3) Berkaitan ganti rugi khas, bantahan perayu-perayu kepada award untuk ubat analgesia bagi sakit kepala sebanyak RM100 sebulan tidak mempunyai merit. Mengikut prinsip award tidak salah dan oleh itu dikekalkan. Walau bagaimanapun, ubat untuk gangguan efektif hati bagi baki jangka hayat responden adalah tuntutan yang bersifat spekulatif dan oleh itu tidak munasabah dan berlebihan. Laporan pakar neurologi responden tidak menyatakan apa-apa pendapat sama ada ubat ini diperlui oleh responden dan untuk berapa lama. Walau bagaimanapun, memandangkan tidak terdapat pertikaian bahawa plaintif mengalami keadaan ini award munasabah patut dibuat untuk masa hadapan dan bukan jumlah keseluruhan yang dituntut. Akibatnya, perkara ini patut dikurangkan kepada RM40,000 (lihat perenggan 5–6).]

Notes

For cases on quantum in general, see 6(1) *Mallal's Digest* (5th Ed, 2015) paras 408–418.

Cases referred to

United Plywood and Sawmill Ltd v Lock Ngan Loi [1970] 2 MLJ 237, FC (refd)

Jagdish Kaur (Kames & Assoc) for the appelant.
Nor Haliza Ishak (Matthew Thomas & Co) for the respondent.

Gunalan Muniandy JC:

[1] This is an appeal against quantum of damages awarded for general damages ('GD') and two items of special damages ('SD') by learned sessions court judge ('the SCJ') in a running down action. The plaintiff/respondent had sustained several injuries in the accident, particularly head injuries, that resulted in some residual disabilities as disclosed in the specialist reports tendered. The law is clear that an appellate court would not interfere with the award of damages by a trial court unless the assessment is considered inordinately low or manifestly excessive or against the discernible trend or pattern of awards or if the court has acted on wrong principles. The governing principle was clearly expressed by the Federal Court in *United Plywood and Sawmill Ltd v Lock Ngan Loi* [1970] 2 MLJ 237 when Gill FJ (later CJ (M)) said:

> An appellate court can only interfere with an assessment if it is considered inordinately low or inordinately high or if it is so much out of line with the

discernible trend or pattern of awards in reasonably comparable cases that it might be regarded as a wholly erroneous estimate;

[2] In this case I have considered carefully the findings and opinions expressed in several specialist reports, the diagnosis in the initial medical reports, the grounds of appeal and the respective submissions and contentions. Having reviewed the assessment by the SCJ, her grounds of decision and the overall evidence on the severity of the plaintiff's injuries and extent of disabilities, I find the awards for the following items of GD to be manifestly excessive or erroneous considering comparable awards:

(a) moderate traumatic brain injury – reasonable award is RM80,000. The plaintiff ('P')'s specialist gave opinion that the residuals will be resolved within two years. The defendant ('D')'s specialist concluded that the residuals were mild. In view of the injury being moderate and the specialist opinion on the residuals, the high award of RM100,000 was unjustified and unreasonable;

(b) loss of consciousness – no separate award should be made as it is included in the compensation for pain and suffering under the head injuries and as such, has been accounted for. Award is wrong in principle and is set aside; and

(c) partial loss of hearing – hearing loss is only to the extent of 5%. There is no justification or basis for the high award of RM40,000 without considering the severity of the loss. A more reasonable award and consistent with the usual trend for this item is RM25,000.

[3] The other awards are not manifestly high and within the range even though on the high side. These awards are, therefore, maintained.

[4] The award for GD is accordingly reduced by RM40,000 to RM177,000 based on the above assessment.

SPECIAL DAMAGES

[5] With respect to the items in dispute, I hold as follows:

(a) analgesic medication for headache – award is supported by Hospital Universiti Kebangsaan Malaysia ('HUKM') report that this medication will be required for two years and a reasonable estimate of RM100 p/m is given. Award is not wrong in principle and is maintained; and

(b) medication for mood affective disorder. Need for medication has not been established to justify an award being made. Neurologist report only gives estimate of cost without expressing any opinion that it will be required by the plaintiff. Neither is there evidence that the plaintiff has

purchased this medication since the head injury and needed it until today. I agree with the appellant's submission that this claim is speculative in nature. However, as there is no dispute that the plaintiff suffers this condition a reasonable award should be made for the future and not the whole sum claimed. The full award for the plaintiff's remaining life span is unreasonable and excessive. Hence, it is wrong in principle and unsupported by the evidence.

[6] Award for this item reduced to RM40,000.

[7] This appeal on quantum is, therefore, allowed as above and the awards in question which I found to be erroneous estimates are varied accordingly with each party to bear their own costs.

Awards varied with each party to bear their own costs.

Reported by Kohila Nesan